

REMARKS

Claims 1-9, 11-15, 18, 19, 21, 23-32, 35-39, 42, 43, 46 and 48 are pending, of which Claims 1, 11, 21, 24, 35 and 46 are independent. Claims 17 and 41 are being cancelled without prejudice or disclaimer of the subject matter. Claims 1, 2, 7-9, 11, 18, 19, 21, 24, 25, 30, 35, 42, 43 and 46 are amended. Reconsideration and further examination are respectfully requested.

Turning to the art rejections, Claims 1-3, 5-8, 11-15, 17, 18, 21, 24-26, 28-31, 35-39, 41, 42 and 46 are rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 5,758,257 (Herz), and Claims 4, 9, 19, 23, 27, 32, 43 and 48 are rejected under 35 U.S.C. § 103(a) over Herz. Reconsideration and withdrawal of the rejections are respectfully requested.

By way of a non-limiting example and in accordance with one or more embodiments, a server, or servers, selects data streams, e.g., songs, video, etc., for a playlist of data streams, which are to be broadcast over a computer network to an individual user computer in the form of a personalized internet radio station for the individual user. The selection method used by the server(s) to select the data streams is influenced but is not controlled by the user's data stream preferences, to prevent an on-demand selection of data streams by the server(s) for the personalized internet radio station based on user data stream preferences.

Turning to the specific language of the claims, Claim 1 recites a method of accessing a database of data streams by at least one server to create a plurality of personalized internet radio stations for broadcast to a plurality of users, each of the personalized internet radio station for broadcast to one individual user of the plurality of individual users and having an individualized playlist that is created exclusively for the individual user and identifying at least one data stream selected from the database for broadcast as the individual user's personalized internet radio station; selecting, by the at least one server, the at least one data stream for the individualized playlist, the at least one data stream of the individualized playlist for broadcast over a computer network to a computer for the individual user as the individual user's personalized internet radio station, the at least one data stream being selected from the database according to a selection method performed by the at least one server to create the playlist of data streams exclusively for the individual user's personalized internet radio station using the individual user's preferences for data streams, the selection method performed by the at least one server being influenced by

the individual user's preferences for data streams but not controlled by the individual user's data stream preferences so as to prevent an on-demand selection of data streams by the at least one server for broadcast to the individual user based on the individual user's data stream preferences; transmitting, by the at least one server, the at least one selected data stream to the computer as the personalized internet radio station broadcast for the individual user via the network; receiving, by the at least one server, feedback via the network, the feedback expressing a preference of the individual user regarding at least one of the transmitted at least one data stream; and reutilizing, by the at least one server, the selection method in response to receiving the preference of the individual user, the reutilizing the selection method performed by the at least one server comprising selecting one or more of the data streams for the playlist for broadcast as part of the individual user's personalized internet radio station, the selecting being made in accordance with the data stream preferences, including the received preference, and limiting the individual user's control over selection of particular data streams from the database to prevent the on-demand selection of data streams.

Claim 1 is amended to even more clearly recite that the at least one server creates a plurality of personalized internet radio stations for broadcast to a plurality of users, each of the personalized internet radio stations is for broadcast to one individual user of the plurality of individual users and has an individualized playlist that is created exclusively for the individual user and identifies at least one data stream selected from the database for broadcast as the individual user's personalized internet radio station. In accordance with the method of Claim 1, the at least one server creates the individualized playlist using a server-performed selection method, which selects the at least one data stream for the individual user's individualized playlist for broadcast as the individual user's personalized internet radio station using the individual user's preferences for data streams, the selection method is influenced by the individual user's input data stream preferences but is not controlled by the individual user's data stream preferences, so as to prevent an on-demand selection of data streams by the server selection method. The selected at least one data stream is transmitted to the computer as the personalized internet radio station for broadcast to the individual user.

Herz cannot form the basis of a proper § 102 rejection, and cannot form the basis of a proper § 103 rejection, since Herz fails to teach, suggest or disclose multiple claim elements.

Herz describes a cable network system that comprises a cable head end that broadcasts general channels to the set top boxes of all of the customers (see col. 2, line 65 – col. 3, line 16, col. 5, lines 9-22 and Figures 4 and 5 of Herz). According to Herz, the cable head end determines the programming for broadcast to all of the set top boxes, and the customer's set top box selects from the programs that are broadcast by the cable head end to the customer's set top box for the customer's virtual channels. All of Herz' set top boxes receive the same programs broadcast by the cable head end, and make recommendations to a customer of the broadcast programming as a virtual channel. While Herz describes that a customer's set top box can customize a virtual channel using a customer's profile, Herz' set top box does not broadcast the virtual channel, but only selects a program, which was broadcast by Herz' cable head end, for a virtual channel as a recommendation for the customer. Herz' cable head end broadcasts the same programs over the broadcast channels to all of the customers, and selects the general programming that is to be broadcast using all of the customers' profiles. In contrast, the claimed at least one server creates a plurality of personalized internet radio stations for broadcast to a plurality of users, and each of the personalized internet radio stations is for broadcast to one individual user of the plurality of individual users, has an individualized playlist that is created exclusively for the individual user and identifies at least one data stream selected from said database for broadcast as the individual user's personalized internet radio station.

In view of the foregoing, since Herz is missing multiples elements recited in Claim 1, Herz cannot provide the basis of a proper § 102(b) or a §103(a) rejection. Claim 1 and the claims that depend from Claim 1 are therefore believed to be in condition for allowance. Claims 11, 21, 24, 35 and 46 and the claims that depend from Claims 11, 21, 24, 35 and 46 are also believed to be in condition for allowance for at least the same reasons.

Amended dependent Claims 2 and 25 further recite that the step of reutilizing the selecting method is performed by the at least one server to update the individualized user's playlist of data streams using the individual user preferences while a data stream selected for said personalized internet radio station is being experienced by said individual user at said computer. Reference is respectfully made to page 12, lines 15 to 22 and page 20 lines 15-17 of the present application, which describes that every five minutes, the user's media player pings the playlist generator, and the playlist generator regenerates and updates the playlist broadcast to the

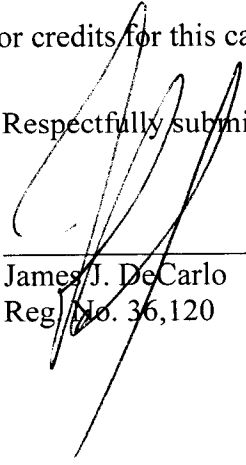
individual user, e.g., updates a stale playlist or a playlist that has a few entries left. Herz fails to disclose the element recited in the claims. Herz' broadcast and virtual channels do not change while the user is watching the channel's programming. Herz describes using a telephone connection to receive feedback from the user, and then used periodically to adjust the scheduling of broadcast programs. In contrast, the claimed at least one server reutilizes the claimed selection method to update the playlist while the personalized internet radio station is being experienced by the individual user at the computer.

Should matters remain which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney. Alternatively, since it is believed that the claims of the present application are in condition for allowance, the Examiner is respectfully requested to issue a Notice of Allowance at the Examiner's earliest convenience.

The applicant's attorney may be reached by telephone at 212-801-6729. All correspondence should continue to be directed to the address given below, which is the address associated with Customer Number 76058.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-1561. Please ensure that the Attorney Docket Number is referenced when charging any payments or credits for this case.

Respectfully submitted,



James J. DeCarlo
Reg. No. 36,120

Date: August 13, 2009

Customer Number 76058
GREENBERG TRAURIG, LLP
Met Life Building
200 Park Avenue, 34th Floor
New York, New York 10166
Phone: (212) 801-9200
Fax: (212) 801-6400